IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8052 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIRABEN GAMBHIRBHAI VASAVA

Versus

A M C

Appearance:

1. Special Civil Application No. 8052 of 1999

MR TR MISHRA for Petitioner No. 1

MR BAROT for MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/07/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the order passed by the respondent Corporation dated 24th August, 1999 whereby, the probation period of

the petitioner was not extended.

2.0. The brief facts of the case are as under :-

2.1. The petitioner had applied for the post of Architectural Assistant, pursuant to the advertisement issued by the respondent - Corporation. On 11th August, 1997, she was called for the interview. After due procedure, the petitioner was appointed as Architectural Assistant on probation for a period of one year on the reserved post of Scheduled Tribe. She resumed the duty on 17th November, 1997. It is the say of the petitioner that the probation period was over on 17th November, 1998 and the same was further extended for a period of six months on 22nd November, 1998.

2.2. On 3rd March, 1999, the petitioner was served with the termination order on the ground that her services were not satisfactory, but subsequently, since the petitioner had earlier approached this Court, by way of Special Civil Application no.1765 of 1999, the Officers of the respondent - Corporation has cancelled the order dated 3rd March, 1999 and on 24th August, 1999 they had not extended her probation period with effect from 21st May, 1999 and terminated the services of the petitioner. It may be noted that the petitioner has not worked after 3rd March, 1999 and her probation period was not extended with effect from 21st May, 1999, which was extended earlier on 22nd November, 1998.

3.0. Mr. Mishra learned advocate for the petitioner submitted that the petitioner has been selected pursuant to the advertisement and she is qualified as per the advertisement. She has not suppressed any material fact while applying for the post of Architectural Assistant and second order passed on 24th August, 1998 is manipulated order and the same cannot be passed giving retrospective effect. Mr. Mishra has also contended that the order is violative of Section 25-F of the Industrial Disputes Act and, therefore, the order is bad in law and it deserves to be quashed and set aside.

4.1. Learned advocate Mr. Barot for Mr. Munshaw for the respondent has submitted that it is true that the petitioner had applied pursuant to the advertisement issued on 20th December, 1995 and she was selected after following the due procedure, but during her probation period it was brought to the notice of the respondent Corporation that the petitioner was not having requisite qualification as laid down in the Recruitment Rules. He has further submitted that she was holding qualification

of Diploma in Architectural Assistant and as such the petitioner was not holding the qualification as laid down in the Recruitment Rules. Thus, the petitioner was not eligible for regular appointment.

4.2. It was also contended on behalf of the respondent - Corporation that the impugned order was passed in the interest of administration and public at large, since the petitioner was not holding requisite qualification for the post and the appointment of the petitioner was contrary to the Recruitment Rules. It was also stated that as per the information collected by the respondent - Corporation, the said course of Diploma in Architecture Assistantship is only for the women candidates and the requisite qualification for entrance in the said course is standard X pass and the duration of the said course is six semester (3 years). It is stated that as against that the qualification of standard XII in Science stream with atleast 55% marks is required for the entrance in the course of Diploma in Architecture Assistantship run by the Centre for the Environmental Planning and Technology and the said course is equivalent to the Bachelor of Architecture Degree Course, They have also produced detailed information booklet of the said course. In that view of the matter, the respondent - Corporation has relieved the petitioner, since the petitioner was not holding requisite qualification.

4.3. It was also stated that the petitioner was appointed as Architectural Assistant and if after some time she is eligible for higher post, having higher responsibilities i.e. the head of Architect and Designing Cell of the Corporation, she does not possess the qualification and, therefore, it was thought it fit not to extend the probation period in the interest of administration and public at large.

5.1. It is an admitted fact that the petitioner is not holding qualification as required under the Rules. However, her appointment was made under a bona fide mistake and she could not have been appointed, since it was contrary to the Rules. Therefore, it is not alleged in the order that the petitioner was not appointed as per the prescribed criteria under the Rules. Thus, the contention of Mr. Mishra is misconceived and is rejected.

5.2. The second contention of Mr. Mishra with regard to retrospective effect is concerned, it is not in dispute that after 3rd March, 1999, the petitioner was neither working nor any protection was granted by this

Court in Special Civil Application No. 1765 of 1999 and if, in the interest of administration and keeping in mind the real administrative exigencies, the respondent Corporation has acted in accordance with Rules, this Court under Article 226 will not exercise discretionary power in favour of the person who is not eligible for the said post.

4.3. In view of the facts and circumstances stated above and in view of the fact that earlier order dated 3rd March, 1999, which was punitive in nature, was cancelled, by even date namely 24th August, 1999, the respondent has passed the order on the same date. Even otherwise also the petitioner has never worked after 3rd March, 1999. Therefore, in real sense, it is not retrospective effect. It has come into operation on 3rd March, 1999 and the respondent has acted in consonance with the Rules. The petitioner has not shown that she was otherwise eligible to be appointed on the post. Therefore, in the interest of administration it is not a fit case where discretionary powers should be exercised in favour of the petitioner.

6.0. As regards the contention that the order is violative of Section 25-F is concerned, this contention is not raised in the petition. In any case, it would have been proper for the petitioner to approach the appropriate forum for appropriate remedy. But in view of the findings given hereinabove that before the probation period was over she was relieved, there is no breach of provisions of Section 25-F, since it is not a retrenchment.

7.0. Thus, looking to the peculiar facts and circumstances of the case and keeping in mind the interest of public at large, I am not inclined to exercise discretionary power in favour of the petitioner. Accordingly, the petition is required to be dismissed and it is hereby, ordered to be dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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